

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

FINAL AGENCY ORDER O-05-216

**IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF MUTUAL
OF OMAHA INSURANCE COMPANY,**

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of Mutual of Omaha Insurance Company (the "Respondent"), pursuant to §§ 10-1-201 to 207, C.R.S. The Commissioner has considered and reviewed the market conduct examination report dated December 9, 2004 (the "Report"), relevant examiner work papers, all written submissions and rebuttals, and the recommendations of staff. The Commissioner finds and orders as follows:

FINDINGS OF FACT

1. At all relevant times, the Respondent was licensed by the Division as a life, accident and health insurance company including Medicare Supplement insurance.
2. In accordance with §§ 10-1-201 to 207, C.R.S., on December 9, 2004, the Division completed a market conduct examination of the Respondent. The period of examination was July 1, 2003 to June 30, 2004.
3. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.
4. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners handbook. The

Commissioner also employed other guidelines and procedures that he deemed appropriate, pursuant to § 10-1-204(1), C.R.S.

5. The market conduct examiners prepared a Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons examined, or as ascertained from the testimony of the Respondent's officers or agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
6. Respondent delivered to the Division written submissions and rebuttals to the Report.
7. The Commissioner has fully considered and reviewed the Report, all and all of Respondent's submissions and rebuttals, and all relevant portions of the examiner's work papers.

CONCLUSIONS OF LAW AND ORDER

8. Unless expressly modified in this Final Agency Order ("the Order"), the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
9. Issue A1 concerns the following violation: Failing to provide the OBRA certification of compliance on the Medicare supplement insurance experience reporting form. The Respondent shall provide evidence that it has corrected its procedures to ensure that the required certification of compliance with OBRA claim payment standards is included on the annual financial statement in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
10. Issue E1 concerns the following violation: Failing to include a policy provision that provides for a refund of unearned premium when a policy is replaced by another Medicare Supplement carrier or a request for cancellation is made by the insured. The Respondent shall provide evidence that it has taken appropriate action to ensure that the correct provisions are incorporated into the Respondent's forms and that the required filings are submitted to the Division in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
11. Issue E2 concerns the following violation: Failing, in some cases, to incorporate the fraud warning language required by Colorado insurance

law. The Respondent shall provide evidence to ensure that it has corrected all applicable forms to include the required fraud warning language in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

12. Pursuant to § 10-1-205(3)(d), C.R.S., the Respondent shall pay a civil penalty in the amount of two hundred fifty and 00/100 dollars (\$250.00). This fine represents a combined fine for the cited violations of Colorado law. This fine was calculated in accordance with Division guidelines for assessing penalties and fines, including Division bulletin no. 1-98, issued on January 1, 1998.
13. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related order.
14. Unless otherwise specified in this Order, all requirements with this Order shall be completed within thirty (30) days of the date of this Order. Respondent shall submit written evidence of compliance with all requirements to the Division within the thirty (30) day time frame, except where Respondent has already complied, as specifically noted in the Order. Copies of any rate and form filings shall be provided to the rate and forms section, with evidence of the filing sent to the market conduct section. All self-audits, if any, shall be performed in accordance with the Division's document, 'Guidelines for Self Audits Performed by Companies' presented at the market conduct examination exit meeting. Unless otherwise specified in this Order, all self-audit reports must be received within ninety (90) days of the Order, with a summary of the findings and all monetary payments to covered persons.
15. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Order may result in additional actions, penalties and sanctions, as provided for by law.
16. Copies of the examination report, the Respondent's response, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of § 10-1-205, C.R.S.

WHEREFORE: It is hereby ordered that the findings and conclusions contained in the final examination Report dated December 9, 2004, are hereby adopted and filed and made an official record of this office, and the above Order is hereby approved this 8th day of April, 2005.

A handwritten signature in black ink, reading "Kirk R. Yeager". The signature is written in a cursive style with a horizontal line underneath it.

Kirk R. Yeager
Deputy Commissioner of Market Regulation

CERTIFICATE OF CERTIFIED MAILING

I hereby certify that on the 8th day of April, 2005, I caused to be deposited the within **FINAL AGENCY ORDER NO. O-05-216 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF MUTUAL OF OMAHA INSURANCE COMPANY** in the United States mail via certified mailing with the proper postage affixed and addressed to:

Mr. Daniel Neary, President
Mutual of Omaha Insurance Company
Mutual of Omaha Plaza
Omaha, NE 68175

Pam Bishop, Regulatory Issues Manager
Mutual of Omaha Insurance Company
Mutual of Omaha Plaza
Omaha, NE 68175

A handwritten signature in cursive script, reading "Dolores Arrington".

Dolores Arrington, MA, AIRC, ACS
Market Conduct Section
Division of Insurance